

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

MIGUEL A. RIVERA-GARCIA

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

CIVIL NO. 06-1004 (PG)

**REPORT AND RECOMMENDATION**

Petitioner claims ineffective assistance of counsel on appeal because counsel failed to raise a Booker claim as to his two level upward adjustment for possession of a firearm pursuant to USSG § 2D1.1 (b) (1). This very claim, contrary to petitioner's assertion, was indeed raised on direct appeal, and the First Circuit rejected the same. Consequently, this claim may not now be raised again within the context of a Section 2255 petition. Davis v. United States, 417 U.S. 333, 342 (1974); Singleton v. United States, 26 F. 3d 233, 240 (1<sup>st</sup> Cir. 1993); United States v. Michaud, 901 F. 2d 5, 6 (1<sup>st</sup> Cir. 1967). As such, the Section 2255 petition at bar (Docket No. 1) must be **DISMISSED**.

Under the provisions of 28 U.S.C. § 636 and Local Rule 72(d), District of Puerto Rico, any party who objects to this report and recommendation must file a written objection thereto with the Clerk of the Court within ten (10) days of the party's receipt of this report and recommendation. The written objections must specifically identify the portion of the recommendation, or report to which objection is made and the basis for such objections. Failure to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111(1986); Davet v. Maccorone, 973 F.2d 22, 30-31 (1<sup>st</sup> Cir. 1992).

**SO RECOMMENDED.**

Date: February 17, 2006

*St Gustavo A. Gelpi*  
GUSTAVO A. GELPI  
United States Magistrate Judge

